

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KINSALE INSURANCE COMPANY, a foreign insurer;

No. 2:22-cv-664

v.
Plaintiff,

COMPLAINT FOR DECLARATORY RELIEF

EAGLE COUNTRY CONSTRUCTION, INC., a Washington Corporation; MICHAEL J. HANSEN and ROCHELLE HANSEN, individually and the marital community comprised thereof; INNOVATIVE INVESTMENTS, INC., a Washington Corporation; COLTON and MORGAN PATTERSON, a married couple; DUSTIN KRENZ and RACHEL STOKES, an unmarried couple; WILLIAM and KIMBERLY UNRAU, a married couple; ALEX and LINDSAY CRAIG, a married couple; GRETA and ANTHONY CHEHREHGOSHA, a married couple;

Defendants.

Plaintiff Kinsale Insurance Company (hereinafter “Kinsale”) submits the following Complaint for Declaratory Relief pursuant to 28 U.S.C. §2201 and Fed.R.Civ.P. 57.

L. PARTIES

1.1 Plaintiff Kinsale is a foreign eligible surplus lines insurer organized under the laws of the state of Arkansas and headquartered in Richmond, Virginia.

1 1.2 Defendant Eagle Country Construction (hereinafter “Eagle Country”) is a
2 corporation organized under the laws of the state of Washington and headquartered in Marysville,
3 Washington.

4 1.3 Defendant Innovative Investments, Inc. (hereinafter “Innovative”) is a corporation
5 organized under the laws of the state of Washington and headquartered in Marysville, Washington.

6 1.4 Defendants Michael and Rochelle Hansen (hereinafter, collectively “the Hansens”)
7 are a married couple residing in Snohomish County, upon information and belief.

8 1.5 Defendants Morgan and Colton Patterson own real property located at 10614 329th
9 Ave SE, Sultan, WA 98294.

10 1.6 Defendants Dustin Krenz and Rachel Stokes own real property located at 10626
11 329th Ave SE, Sultan WA 98294.

12 1.7 Defendants William and Kimberly Unrau own real property located at 10606 329th
13 Ave SE, Sultan, WA 98294.

14 1.8 Defendants Alex and Lindsay Craig own real property located at 10716 329th Ave
15 SE, Sultan, WA 98294.

16 1.9 Defendants Greta and Anthony Chehrehgosha own real property located at 10702
17 329th Ave SE, Sultan, WA 98294.

18 **II. JURISDICTION AND VENUE**

19 2.1 Jurisdiction is properly before this Court pursuant to 28 U.S.C. § 1332 *et sequitur*,
20 as complete diversity exists among the parties and the amount in controversy exceeds \$75,000.

21 2.2 This Court has jurisdiction over this Declaratory Judgment action pursuant to 28A
22 U.S.C. § 2201 because there is an actual and justiciable controversy between the parties with
23 respect to the existence of insurance coverage under the Policy of insurance issued by Kinsale. A
24

judicial determination and declaration of the rights and obligations of the parties is necessary and appropriate at this time because Kinsale has no adequate remedy to resolve the current controversy.

2.3 Venue is proper in this Court pursuant to 28 U.S.C. § 1391 as this action involves a dispute over the application of insurance coverage under policies issued in Washington, events and omissions which give rise to this claim occurred in this district, and all of the Defendants are subject to this Court's jurisdiction.

III. FACTUAL BACKGROUND

A. The Underlying Lawsuit

3.1 In 2019, Plaintiffs Colton and Morgan Patterson, a married couple; Dustin Krenz and Rachel Stokes, an unmarried couple; William and Kimberly Unrau, a married couple; Alex and Lindsay Craig, a married couple; and Greta and Anthony Chehrehgosha, a married couple, (hereinafter collectively referred to as “Underlying Plaintiffs”) entered into Purchase and Sale Contracts with Innovative for newly built homes at each of the Underlying Plaintiffs’ respective properties.

3.2 Underlying Defendants, the Hansens, are governors of Eagle Country, and Michael Hansen is the managing member of Innovative.

3.3 The Underlying Plaintiffs' homes are located outside of the Sultan city limits, where neither municipal nor county water service is available, and basic water service to Underlying Plaintiffs' homes can only be accomplished via local well drilling.

3.4 Eagle Country entered into a construction contract with Innovative to construct the Underlying Plaintiffs' five homes.

3.5 Eagle Country drilled wells in an effort to provide water to Underlying Plaintiffs' homes.

1 3.6 Eagle Country's first attempt to drill a well service to Underlying Plaintiffs'
2 properties allegedly failed. Eagle Country allegedly abandoned the dry well and did not
3 decommission it as required under Washington law.

4 3.7 Eagle Country then allegedly drilled three additional wells on Underlying
5 Plaintiffs' properties, in very close proximity, in an effort to ensure water supply to Underlying
6 Plaintiffs' properties.

7 3.8 Eagle Country allegedly used superficial and ineffective testing methods to
8 determine whether these wells could continuously make available potable water in adequate
9 volumes to service the Underlying Plaintiffs' homes.

10 3.9 The Purchase and Sale Contracts provide Underlying Plaintiffs the opportunity to
11 inspect the wells and water systems prior to closing the sale of their properties.

12 3.10 Some Underlying Plaintiffs allegedly did not have the opportunity to inspect the
13 wells and water systems because the water service was not connected to their home until the date
14 of the closing.

15 3.11 When Underlying Plaintiffs moved into their homes, they allege that the wells
16 either produced insufficient volumes of water or produced water that was yellow in color and
17 smelled of ammonia.

18 3.12 Underlying Plaintiffs allegedly complained to Eagle Country, and in response to
19 the Underlying Plaintiffs' complaints, Eagle Country assured Underlying Plaintiffs there were no
20 concerns and that the water quality would improve quickly with use.

21 3.13 Underlying Plaintiffs allege that the water quality did not improve, and Underlying
22 Plaintiffs and their children became ill with similar symptoms.

23 3.14 Eagle Country allegedly hired a third-party contractor to install a filtration system

1 on Underlying Plaintiffs' wells, but the filtration system failed to improve the water quality.

2 3.15 The third-party contractor Eagle Country hired was allegedly neither licensed nor
3 bonded.

4 3.16 The Underlying Plaintiffs alleged that the third-party contractor installed filtration
5 systems incorrectly.

6 3.17 When Underlying Plaintiffs raised their concerns to Eagle Country, Eagle Country
7 allegedly assured Underlying Plaintiffs that the problems would be fixed promptly.

8 3.18 Multiple wells on Underlying Plaintiffs' property allegedly ran completely dry, and
9 Underlying Plaintiffs continued to complain to Eagle Country.

10 3.19 In December 2019, Eagle Country allegedly offered to pay for the filtration
11 equipment as a courtesy, while asserting that it was not responsible for anything further.

12 3.20 Eagle Country also allegedly demanded that two Underlying Plaintiffs supply a
13 third Underlying Plaintiff with water until a permanent solution was found for the well problems.

14 3.21 Eagle Country allegedly forced Underlying Plaintiffs to sign an agreement pursuant
15 to which Eagle Country would provide a "Stenner Chlorination System with a carbon backwash
16 unit" in exchange for Underlying Plaintiffs' acceptance that Eagle Country offered no future
17 warranty.

18 3.22 Eagle Country allegedly claimed that the installation date would be approximately
19 one week away.

20 3.23 Underlying Plaintiffs allege that they signed under duress. Eagle Country allegedly
21 never installed the promised equipment.

22 3.24 During a February 2020 meeting between Underlying Plaintiffs and Eagle Country,
23 Michael Hansen allegedly acknowledged the well problems.

1 3.25 He allegedly offered \$3,000.00 to the Underlying Plaintiffs Patterson and Unrau as
2 reimbursement for Eagle Country's failure to provide clean drinking water.

3 3.26 Other errors alleged to have been made by Eagle Country include failing to include
4 any well identification tags required by law and placing Underlying Plaintiffs' wells within 100
5 feet of a neighboring septic drain field, in violation of law.

6 3.27 Days after the February 2020 meeting, fraudulent well identification tags allegedly
7 appeared. The tags allegedly belonged to wells in different locations.

8 3.28 Underlying Plaintiffs engaged JKA Well Drilling & Pumps (hereinafter "JKA") to
9 ascertain the full extent of the property damages.

10 3.29 JKA stated that Underlying Plaintiffs' wells are effectively dry because all three
11 are tied into the same fractured rock aquifer, that Eagle Country violated several provisions of the
12 Washington Administrative Code, that the water filters installed by Eagle Country will not address
13 the water quality issues, that plumbing is incorrectly installed, and that what little water one well
14 was producing was unsafe for drinking.

15 3.30 Ultimately, JKA recommended that all three wells be replaced.

16 3.31 On September 2, 2020, Underlying Plaintiffs filed a Complaint in the Superior
17 Court of Washington in and for Snohomish County, Case No. 20-2-04416-31, against Innovative,
18 Eagle Country, the Hansens, Nicole Ji, and Compass Washington, LLC (the "Underlying
19 Complaint).

20 3.32 Underlying Plaintiffs assert the following causes of action against Defendant Eagle
21 Country:

22 (1) Negligence;
23 (2) Breach of Warranty; and

(3) Violation of the Consumer Protection Act, RCW Ch. 19.86.

3.33 Underlying Plaintiffs assert the following allegations against the Hansen Defendants:

- (1) Breach of Contract;
- (2) Breach of Implied Warranty of Habitability;
- (3) Negligence;
- (4) Violation of the Consumer Protection Act, RCW Ch. 19.86; and
- (5) In the alternative: Rescission.

3.34 Underlying Plaintiffs assert the following allegations against Defendant Innovative Investments:

- (1) Breach of Contract
- (2) Breach of Implied Warranty of Habitability;
- (3) Violation of the Consumer Protection Act, RCW Ch. 19.86; and
- (4) In the alternative: Rescission.

3.35 Underlying Plaintiffs allege that the property damages and ongoing defects caused by Eagle Country, the Hansens, and Innovative have resulted in damages in amounts to be established at trial, including treble damages, Underlying Plaintiffs' attorney's fees, interests, expenses, and costs as provided by statute, contract and applicable law.

B. Identification of the Kinsale Policy

3.36 Kinsale issued a Commercial General Liability Policy of insurance to Eagle Country, policy number 0100106777-0 (hereinafter “20/21 Policy”). The 20/21 Policy was in effect from February 2, 2020 to February 2, 2021.

3.37 The 20/21 Policy provides commercial general liability coverage with limits up to

1 \$1,000,000 for each occurrence, a general aggregate limit of \$2,000,000, with the general
2 aggregate limit applying separately to each “project” as defined in Policy. The 20/21 Policy also
3 includes a total, all projects, aggregate in the amount of \$5,000,000.

4 3.38 The 20/21 Policy was renewed and Kinsale issued policy number 0100106777-1
5 (hereinafter “21/22 Policy”) to Eagle Country Construction, Inc. The 21/22 Policy was in effect
6 from February 2, 2021 to February 2, 2022.

7 3.39 The 21/22 Policy provides commercial general liability coverage with limits up to
8 \$1,000,000 for each occurrence, a general aggregate limit of \$2,000,000, with the general
9 aggregate limit applying separately to each “project” as defined in the Policy. The 21/22 Policy
10 also includes a total, all projects, aggregate in the amount of \$5,000,000.

11 3.40 The Policy¹ contains a Bodily Injury Liability and/or Property Damage Liability
12 and/or Personal & Advertising Injury Liability, combined deductible in the amount of \$2,500.
13 This deductible applies to all damages for all “bodily injury,” “property damage,” and “personal
14 and advertising injury,” however that injury is caused.

15 **C. Provisions of the Kinsale Policy**

16 3.41 The Policy grants liability coverage to the Insured under the following pertinent
17 terms:

18 **1. Insuring Agreement**

19 a. We will pay those sums that the insured becomes
20 legally obligated to pay as damages because of
21 “bodily injury” or “property damage” to which this
insurance applies. We will have the right and duty to
defend the insured against any “suit” seeking those

22

¹For the purpose of this Complaint, unless otherwise noted, both Policies contain the same substantive provisions and
23 will be addressed collectively as the “Policy.” Should provisions differ, this Complaint will specify which Policy it is
24 addressing. When addressing a single policy, Policy No. 0100106777-0 will hereinafter be referred to as the 20/21
Policy. Policy No. 0100106777-1 will hereinafter be referred to as the 21/22 Policy.

1 damages. However, we will have no duty to defend
 2 the insured against any “suit” seeking damages for
 3 “bodily injury” or “property damage” to which this
 4 insurance does not apply. We may, at our discretion,
 5 investigate any “occurrence” and settle any claim or
 6 “suit” that may result. But:

- 7 (1) The amount we will pay for damages is
 8 limited as described in Section III – Limits of
 9 Insurance; and
- 10 (2) Our right and duty to defend ends when we
 11 have used up the applicable limit of insurance
 12 in the payment of judgments or settlements
 13 under Coverage A or B or medical expenses
 14 under Coverage C.

15 No other obligation or liability to pay sums or
 16 perform acts or services is covered unless explicitly
 17 provided for under Supplementary Payments –
 18 Coverages A and B.

- 19 b. This insurance applies to “bodily injury” and
 20 “property damages” only if:
 - 21 (1) The “bodily injury” or “property damage” is
 22 caused by an “occurrence” that takes place in
 23 the “coverage territory”;
 - 24 (2) The “bodily injury” or “property damage”
 25 occurs during the policy period; and
 - 26 (3) Prior to the policy period, no insured listed
 27 under Paragraph 1. of Section II – Who Is An
 28 Insured and no “employee” authorized by
 29 you to give or receive notice of an
 30 “occurrence” or claim, knew that the “bodily
 31 injury” or “proper damage” had occurred, in
 32 whole or in part. If such a listed insured or
 33 authorized “employee” knew, prior to the
 34 policy period, that the “bodily injury” or
 35 “property damage” occurred, then any
 36 continuation, change or resumption of such
 37 “bodily injury” or “property damage” during
 38 or after the policy period will be deemed to
 39 have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
 - (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

CG 00 01 10 01, 20/21 Policy;
CG 00 01 04 13, 21/22 Policy.

3.42 The Policy contains the following applicable exclusions to coverage regarding bodily injury and property damages:

2. Exclusions

1 This insurance does not apply to:

2 **a. Expected Or Intended Injury**

3 "Bodyly injury" or "property damage" expected or
4 intended from the standpoint of the insured. This
5 exclusion does not apply to "bodyly injury" resulting
6 from the use of reasonable force to protect persons or
7 property.

8 **b. Contractual Liability**

9 "Bodyly injury" or "property damage" for which the
10 insured is obligated to pay damages by reason of
11 assumption of liability in a contract or agreement.
12 This exclusion does not apply to liability for
13 damages:

14 **(1)** That the insured would have in the absence of
15 the contract or agreement; or

16 **(2)** Assumed in a contract or agreement that is an
17 "insured contract", provided the "bodyly
18 injury" or "property damage" occurs
19 subsequent to the execution of the contract or
20 agreement. Solely for the purposes of liability
21 assumed in an "insured contract", reasonable
22 attorney fees and necessary litigation
23 expenses incurred by or for a party other than
24 an insured are deemed to be damages because
 of "bodyly injury" or "property damage",
 provided:

25 **(a)** Liability to such party for, or for the
26 cost of, that party's defense has also
27 been assumed in the same "insured
28 contract"; and

29 **(b)** Such attorney fees and litigation
30 expenses are for defense of that party
31 against a civil or alternative dispute
32 resolution proceeding in which
33 damages to which this insurance
34 applies are alleged.

35 [...]

1 **j. Damage To Property**

2 "Property damage" to:

3 [...]

4 **(5)** That particular part of real property on which
5 you or any contractors or subcontractors
6 working directly or indirectly on your behalf
 are performing operations, if the "property
 damage" arises out of those operations; or

7 [...]

8 Paragraphs (3), (4), (5) and (6) of this
9 exclusion do not apply to liability assumed
 under a sidetrack agreement.

10 **(6)** That particular part of any property that must
11 be restored, repaired or replaced because
 "your work" was incorrectly performed on it.

12 [...]

13 Paragraphs (3), (4), (5) and (6) of this
14 exclusion do not apply to liability assumed
 under a sidetrack agreement.

15 Paragraph (6) of this exclusion does not apply
16 to "property damage" included in the
 "products completed operations hazard".

17 **k. Damage To Your Product**

18 "Property damage" to "your product" arising out of it
19 or any part of it.

20 **l. Damage To Your Work**

21 "Property damage" to "your work" arising out of it
22 or any part of it and included in the "products-
23 completed operations hazard". This exclusion does
 not apply if the damaged work or the work out of
 which the damage arises was performed on your
 behalf by a subcontractor.

m. Damage To Impaired Property or Property Not Physically Injured

“Property damage” to “impaired property” or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in “your product” or “your work”; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property"; if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

CG 00 01 10 01, 20/21 Policy;
CG 00 01 04 13, 21/22 Policy.

3.43 Additionally, the Policy contains the following endorsement to coverage regarding prior injury or damage:

1 **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE
2 READ IT CAREFULLY.**

3 **ADDITIONAL POLICY EXCLUSIONS**

4 [...]

5 **PRIOR INJURY OR DAMAGE EXCLUSION**

6 This insurance does not apply to “bodily injury,” “property damage”
7 or “personal and advertising injury” which begins or takes place
8 before the inception date of this policy or before the retroactive date
9 of this policy if claims-made coverage applies, regardless of whether
10 or not such “bodily injury”, “property damage” or “personal and
11 advertising injury” is known to any insured. This exclusion shall
12 apply even though the nature and extent of such damage or injury
13 may change and even though the damage or injury may be
14 continuous, progressive, cumulative, changing or evolving, and
15 even though the “occurrence” causing such “bodily injury” or
16 “property damage”, or, the offense causing such “personal and
17 advertising injury” may ne or may involve a continuous or repeated
18 exposure to substantially the same general harm or condition.

19 If you are a contractor, builder or developer the following also
20 applies:

21 All “property damage” to units of or within a single project or
22 development and arising from the same general type of harm or
23 condition, shall be deemed to occur at the time of damage to the first
24 such unit, even though the existence, nature and extent of such
25 damage may change even though the “occurrence” causing such
26 “property damage” may be or involve a continuous or repeated
27 exposure to substantially the same general harm or condition which
28 also continues or takes place (in case of the repeated exposure to the
29 substantially the same general harm or condition) during the policy
30 period of this policy.

31 CAS3043 0817

32 3.44 The Policy contains the following potentially applicable exclusion to coverage
33 regarding the fiduciary duty of an insured:

1 **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE**
2 **READ IT CAREFULLY.**

3 **ADDITIONAL POLICY EXCLUSIONS**

4 [...]

5 **FIDUCIARY EXCLUSION**

6 This insurance does not apply to any claim or “suit” arising directly
7 or indirectly out of, related to, or, in any way involving:

- 8 1. Coercion, conversion or misappropriation of the funds or
9 property of others;
- 10 2. Dishonest, fraudulent, criminal or malicious acts or
11 omissions of the insured, or any partner or employee or any
12 person form whom you are legally responsible; or
- 13 3. Activities or operations performed in the capacity of a
14 fiduciary.

15 CAS3043 0817.

16 3.45 The Policy contains the following potentially applicable exclusion to coverage
17 regarding the duty to defend an insured:

18 **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE**
19 **READ IT CAREFULLY.**

20 **ADDITIONAL POLICY EXCLUSIONS**

21 [...]

22 **DUTY TO DEFEND EXCLUSION**

23 Where there is no coverage under this policy, there is no duty to
24 defend.

25 CAS3043 0817.

26 3.46 The Policy contains the following potentially applicable exclusion to coverage
27 regarding underground facilities:

1 **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE
2 READ IT CAREFULLY.**

3 **EXCLUSION – UNDERGROUND FACILITY**

4 [...]

5 **This endorsement modifies the insurance provided under the
6 following:**

7 **COMMERCIAL GENERAL LIABILITY COVERAGE**

8 The following exclusion is added to this policy:

9 This insurance does not apply to any claim or "suit" for
10 "bodily injury", "property damage", "personal and
11 advertising injury" or "underground property damage"
12 arising directly or indirectly out of, related to, or, in any way
13 involving any failure by you or others working on your
14 behalf to take "appropriate" steps in advance of any job or
15 work commencing, locating, identifying or marking the
16 location of any "underground facility".

17 For purposes of this exclusion, the following definitions apply:

18 "Underground property damage" means "property damage" to an
19 "underground facility" including any resulting "property damage" to
20 any other property, caused by digging, grading land, paving,
21 excavating, drilling, borrowing, filling, back-filling, horizontal
22 boring or pile driving.

23 "Appropriate" means actions normally taken or used in the job site
24 jurisdiction to locate, identify and mark the location of
25 "underground facilities" to protect or prevent damage. This includes,
26 but is not limited to compliance with all state or local codes or
27 regulations.

28 "Underground facility" means any item located below ground for
29 use in connection with the storage or conveyance of water, sewage,
30 electronic, telephonic or telegraphic communications, television,
31 fiber optic, digital, electric energy, petroleum products, gas, gaseous
32 vapors, hazardous liquids or other substances and including but not
33 limited to pipes, sewers, conduits, mains, cables, valves, lines,

wires, tanks, tunnels, manholes, attachments and any other similar property, and any apparatus used with them beneath the surface of the ground or water.

CAS3044 0319, 20/21 Policy;
CAS3044 0220, 21/22 Policy.

3.47 The 20/21 Policy contains the following potentially applicable exclusion to coverage regarding fungi or bacteria:

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE
READ IT CAREFULLY.**

FUNGI OR BACTERIA EXCLUSION

[...]

This endorsement modifies the insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2. Exclusions of **Section I – Coverage A – Bodily Injury And Property Damage Liability:**

2. Exclusions

This insurance does not apply to:

Fungi Or Bacteria

a. "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or

1 product contributed concurrently or in any
2 sequence to such injury or damage.

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b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity. This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

10 [...]

11

12

C. The following definition is added to the Definitions Section:
"Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

13 CG2167 1204, 20/21 Policy.

14 3.48 The 21/22 Policy contains the following potentially applicable exclusion to
15 coverage regarding bodily injury or property damage arising from pathogens and related hazards:

16 **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE
17 READ IT CAREFULLY.**

18 **EXCLUSION – PATHOGEN AND RELATED HAZARDS**

19 [...]

20 **This endorsement modifies the insurance provided under the
21 following:**

22 **COMMERCIAL GENERAL LIABILITY COVERAGE
23 PRODUCTS/COMPLETED OPERATIONS LIABILITY
24 COVERAGE**

The following exclusion is added to this Policy:

1
2 This insurance does not apply to “bodily injury”, “property
3 damage”, or “personal and advertising injury” arising directly or
4 indirectly out of, related to, or in any way involving the inhalation
of, absorption of, ingestion of, contact with, exposure to, existence
of, or presence of any form of “pathogen and related hazards”.

5 This exclusion applies, but is not limited to the following:

6 a. Providing or failing to provide any supervision, instructions,
7 recommendations, warnings, or advice related to any actual,
8 alleged or threatened inhalation of, ingestion of, contact
with, exposure to, existence of, or presence of any form of
“pathogen and related hazards”;

9 b. Failure to provide an environment safe from “pathogen and
10 related hazards” or the actual, alleged or threatened
transmission to others;

11 c. The prevention or suppression, or failure to prevent or
12 suppress “pathogen and related hazards” or the actual,
alleged, or threatened transmission to others;

13 d. The reporting or failure to report to the proper authorities;

14 e. The negligent hiring, employment, training, supervision, or
15 retention of any insured, “employee”, agent or other person
with respect to a. through d. above; or

16 f. Any loss, cost or expense arising out of, related to, or in any
17 way involving any claim, “suit”, request, or demand that any
insured:
18
19 (1) Assess the presence, absence, amount, or effects of
any “pathogen and related hazards”; or
20
21 (2) Identify, sample, test, monitor, clean up, remove,
dispose of, or neutralize the effects of any “pathogen
22 and related hazards” in any building, material,
animal, or product, including but not limited to “your
product”; or
23
24

(3) Respond to any “pathogen and related hazards” in any manner other than as described in (1) or (2) above.

This exclusion applies to any claim or “suit” regardless of whether any “pathogen and related hazards” is the initial precipitating cause or is in any way a cause of injury or damage and regardless of whether any other actual or alleged cause, event, material or product contributed concurrently, proximately, or in any sequence to such injury or damage, including whether any actual or alleged injury or damage arises out of a chain of events that includes “pathogen and related hazards”.

As used in this exclusion, “pathogen and related hazards” includes, without limitation:

- a. Fungus, including but not limited to any type of mold or mildew;
- b. Any protist, including but not limited to algae and slime mold;
- c. Any chemical matter, or compound produced or released by a fungus or protist, including but not limited to any mycotoxin, toxin, spore, scent, fragment, metabolites, or other by-product that is produced by a. or b. above;
- d. Any pathogen, including but not limited to virus, bacterium, prion, or protozoa or other microorganism;
- e. Any sexually transmitted disease, including but not limited to Acquired Immunodeficiency Syndrome or Human Immunodeficiency Virus, or exposure to another having the same, or to substances or materials contaminated with the same, or fear of contracting Acquired Immunodeficiency Syndrome, Human Immunodeficiency Virus, or any other communicable disease; or;

1 f. Any other infectious or contagious disease
2 transmissible by direct contact with an affected
3 individual or the individual's discharges or by
4 indirect means.

5 Solely regarding Coverage A – Bodily Injury and Property
6 Damage Liability, this exclusion does not apply to fungi or
7 bacteria on, or contained in, a good or product intended for
8 bodily consumption.

9 CAS3140-0320, 21/22 Policy.

10 3.49 The Policy contains the following endorsement to coverage regarding bodily injury
11 and property damage arising out of pollution:

12 **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE
13 READ IT CAREFULLY.**

14 **EXCLUSION – ABSOLUTE POLLUTION AND
15 POLLUTION RELATED LIABILITY**

16 [...]

17 This endorsement modifies insurance provided under the
18 following:

19 **ALL COVERAGE FORMS**

20 The following exclusion is added to this policy. If the policy already
21 includes a pollution exclusion or a pollution related exclusion, such
22 exclusion(s) is (are) deleted and replaced with the following:

23 This insurance does not apply to any claim or "suit" for
24 "bodily injury", "property damage", "personal and
25 advertising injury" or any other injury, damage, or legal
26 liability of any kind, arising directly or indirectly out of,
27 related to, including, or in any way involving the actual,
28 alleged or threatened discharge, dispersal, seepage,
29 migration, release, escape of, placement of, or presence of
30 "pollutants", however caused, including but not limited to:

31 a. Any loss, cost, expense, fines or penalty
32 arising out of any (i) request, demand, order,
33 governmental authority or directive, or, that

of any private party or citizen action, that any insured, or others, test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize or in any way respond to, or assess same, the effects of "pollutants" or (ii) any litigation or administrative procedure in which any insured or others may be involved as a party as a result of actual, alleged or threatened discharge, dispersal, seepage, migration, release, escape of or placement of, or presence of "pollutants" into or upon land, premises, buildings, the atmosphere, any water course, body of water, aquifer or ground water, whether sudden, accidental or gradual in nature or not, and regardless of when.

b. The devaluation of property, or for taking, use or acquisition or interference with the rights of others in or on property or air space, or any other type injury or expense.

This exclusion applies regardless of fault or intent, regardless of the particular cause of action or theory of liability, regardless of whether a “pollutant” is the initial precipitating cause or is in any way a cause, in the chain of events, and regardless of whether any other actual or alleged cause other than a “pollutant” contributed concurrently, proximately, or in any other sequence to the “bodily injury”, “property damage”, “personal and advertising injury”, or any other injury, damage, or legal liability.

The following definition is added to the policy. If the policy already includes a definition of "pollutants" such definition is deleted and replaced with the following:

"Pollutants" means any solid, liquid, gaseous, fuel, lubricant, thermal, acoustic, electrical, or magnetic irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, fibers, radiation, acid, alkalis, petroleum products, chemicals or "waste". "Waste" includes medical waste, biological infectants, and all other materials to be disposed of, recycled, stored, reconditioned or reclaimed.

ADF3003 0519.

3.50 The Policy contains the following provision regarding who is an insured under the Policy:

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
 - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
 - a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing

duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

(a) Owned, occupied or used by,

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any

1 member (if you are a limited liability
2 company).

3 b. Any person (other than your "employee" or
4 "volunteer worker"), or any organization while
5 acting as your real estate manager.

6 c. Any person or organization having proper temporary
7 custody of your property if you die, but only:

8 (1) With respect to liability arising out of the
9 maintenance or use of that property; and

10 (2) Until your legal representative has been
11 appointed.

12 d. Your legal representative if you die, but only with
13 respect to duties as such. That representative will
14 have all your rights and duties under this Coverage
15 Part.

16 3. With respect to "mobile equipment" registered in your name
17 under any motor vehicle registration law, any person is an
18 insured while driving such equipment along a public
19 highway with your permission. Any other person or
20 organization responsible for the conduct of such person is
21 also an insured, but only with respect to liability arising out
22 of the operation of the equipment, and only if no other
23 insurance of any kind is available to that person or
24 organization for this liability. However, no person or
organization is an insured with respect to:

17 a. "Bodily injury" to a co-"employee" of the person
driving the equipment; or

18 b. "Property damage" to property owned by, rented to,
in the charge of or occupied by you or the employer
of any person who is an insured under this provision.

20 No person or organization is an insured with respect to the
21 conduct of any current or past partnership, joint venture or
22 limited liability company that is not shown as a Named
23 Insured in the Declarations.

25 GC 00 01 10 01, 20/21 Policy (as amended by CAS3011 0110);
26 GC 00 01 04 13, 21/22 Policy.

1
2 3.51 Further, the 21/22 Policy contains the following endorsement pertaining to
additional insureds:
3
4

5
6 **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE
READ IT CAREFULLY.**
7

8
9 **ADDITIONAL INSURED AS REQUIRED BY WRITTEN
CONTRACT – MORTGAGEE, ASSIGNEE, OR RECEIVER
- SCHEDULED**
10

11 [...]
12

13 **This endorsement modifies the insurance provided under the
following:**
14

15 **COMMERCIAL GENERAL LIABILITY COVERAGE
PRODUCTS/COMPLETED OPERATIONS LIABILITY
COVERAGE**
16

SCHEDULE

Name of Person(s) or Organization(s)	Designation of Premises:
Innovative Investments, Inc.	
Construction Loan Services II, LLC ISAOA/ATIMA	

17 **A. SECTION II - WHO IS AN INSURED** is amended to
18 include as an Additional Insured any person(s) or organization(s)
19 shown in the above Schedule that you are required by written
20 contract to add as an Additional Insured, but:
21

22 1. Only if such written contract was executed prior to
23 the “bodily injury” or “property damage” and is in
24 effect at the time the “bodily injury” or “property
damage” occurs; and

25 2. Only with respect to such person or organization’s
26 vicarious liability for “bodily injury” or “property
damage” as mortgagee, assignee, or receiver; and

27 3. Solely for liability caused by the ownership,
28 maintenance or use of the premises by you and
29 shown in the above Schedule.
30

1 However:

2 1. The insurance afforded to such Additional Insured
3 only applies to the extent permitted by law; and
4
5 2. Will not be broader than that which you are required
6 by the written contract to provide for such Additional
7 Insured.

8 B. With respect to the insurance afforded to the Additional
9 Insured, the following additional exclusion applies:

10 1. This insurance does not apply to any structural
11 alterations, new construction or demolition
12 operations performed by or for the person or
13 organization shown in the above Schedule.

14 C. With respect to the insurance afforded to the Additional Insured,
15 the following is added to **SECTION III – LIMITS
16 OF INSURANCE:**

17 The most we will pay on behalf of the Additional Insured is
18 the amount of insurance:

19 1. Required by the written contract; or
20 2. Available under the applicable limits of insurance;
21 whichever is less

22 This endorsement shall not increase the applicable limits of
23 insurance.

24 D. Duties of the Additional Insured in the event of an
25 “occurrence”, claim or “suit”:

26 1. The Additional Insured must promptly give notice of
27 an “occurrence” which may result in a claim, a claim
28 which is made, or, a “suit” to any other insurer which
29 has insurance for a loss to which this insurance may
30 apply.
31
32 2. The Additional Insured must promptly tender the
33 defense of any claim made or ‘suit’ to any other
34 insurer which also issued insurance to the Additional
35 Insured as a Named Insured or to which the
36 Additional Insured may qualify as an Additional
37 Insured for a loss to which this insurance may apply.

1
2 CAS5004 0420, 21/22 Policy.
3
4

5 3.52 The Policy includes the following definitions relevant to the above-referenced
6 provisions:
7

8 3. “Bodily injury” means bodily injury, sickness or disease
9 sustained by a person, including death resulting from any of
10 these at any time.
11

12 [...]
13

14 9. “Insured contract” means:
15

16 a. A contract for a lease of premises. However, that
17 portion of the contract for a lease of premises that
18 indemnifies any person or organization for damage
19 by fire to premises while rented to you or temporarily
20 occupied by you with permission of the owner is not
21 an “insured contract”;
22
23 b. A sidetrack agreement;
24
25 c. Any easement or license agreement, except in
26 connection with construction or demolition
27 operations on or within 50 feet of a railroad;
28
29 d. An obligation, as required by ordinance, to
30 indemnify a municipality, except in connection with
31 work for a municipality;
32
33 e. An elevator maintenance agreement;
34
35 f. That part of any other contract or agreement
36 pertaining to your business (including an
37 indemnification of a municipality in connection with
38 work performed for a municipality) under which you
39 assume the tort liability of another party to pay for
40 “bodily injury” or “property damage” to a third
41 person or organization. Tort liability means a
42 liability that would be imposed by law in the absence
43 of any contract or agreement. Paragraph f. does not
44 include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

[...]

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

[...]

16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

- (a) When all of the work called for in your contract has been completed.
- (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
- (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
 - (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule,

1 states that products-completed
2 operations are subject to the General
Aggregate Limit.

3 [...]

4 **17.** "Property damage" means:

5 a. Physical injury to tangible property, including all
6 resulting loss of use of that property. All such loss of
use shall be deemed to occur at the time of the
physical injury that caused it; or
7
8 b. Loss of use of tangible property that is not physically
injured. All such loss of use shall be deemed to occur
at the time of the "occurrence" that caused it.
9

10 [...]

11 **21.** "Your product":

12 a. Means:

13 (1) Any goods or products, other than real
property, manufactured, sold, handled,
distributed or disposed of by:
14
15 (a) You;
16
17 (b) Others trading under your name; or
18
19 (c) A person or organization whose
business or assets you have acquired;
and
20
21 (2) Containers (other than vehicles), materials,
parts or equipment furnished in connection
with such goods or products.

22 **22.** "Your work":

23 a. Means:

24 (1) Work or operations performed by you or on
your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2) The providing of or failure to provide warnings or instructions.

CG 00 01 10 01, 20/21 Policy;

CG 00 01 04 13, 21/22 Policy.

3.53 Kinsale reserves the right to assert any other policy language or coverage forms of the Policy that may be potentially applicable to this action.

D. Kinsale's Claims Handling

3.54 Upon receiving notice of the Underlying Complaint, Kinsale promptly opened a claim and began its claims investigation.

3.55 Kinsale is currently defending Eagle Country, the Hansens, and Innovative pursuant to a full reservation of rights.

IV. NO INDEMNITY OR DEFENSE COVERAGE IS OWED UNDER THE KINSALE POLICY

4.1 Kinsale incorporates by reference all the allegations contained in paragraphs 1.1 – 3.55 as if set forth fully herein.

4.2 The Policy states that Kinsale will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies.

4.3 The Policy defines “property damage” as (a) physical injury to tangible property,

1 including all resulting loss of use of that property or (b) loss of use of tangible property that is not
2 physically injured.

3 4.4 An actual and justiciable controversy exists as to whether there was any “property
4 damage”.

5 4.5 “Bodily injury” means bodily injury, sickness or disease sustained by a person,
6 including death resulting from any of these at any time.

7 4.6 An actual and justiciable controversy exists as to whether there was any “bodily
8 injury”.

9 4.7 The Policy further requires that any “bodily injury” and/or “property damage” must
10 be caused by an “occurrence”.

11 4.8 “Occurrence” means an accident, including continuous or repeated exposure to
12 substantially the same general harmful conditions.

13 4.9 An actual and justiciable controversy exists as to whether there was an
14 “occurrence”.

15 4.10 The Policy’s Insuring Agreement states that this insurance applies to “bodily
16 injury” or “property damage” only if, prior to the Policy period, no insured knew that the “bodily
17 injury or “property damage” had occurred, in whole or in part.

18 4.11 An actual and justiciable controversy exists as to whether Eagle Country knew, in
19 whole or part, of the “bodily injury” or “property damage” prior to the inception of the Policy.

20 4.12 The Policy expressly excludes coverage for “property damage” and “bodily injury”
21 which was expected or intended from the standpoint of the insured.

22 4.13 An actual and justiciable controversy exists as to whether Eagle Country expected
23 or intended “property damage” or “bodily injury” from its standpoint.

1 4.14 The Policy excludes coverage for “bodily injury” or “property damage” resulting
2 from obligations assumed through a contract, unless such a contract meets the definition of
3 “insured contract.”

4 4.15 An actual and justiciable controversy exists as to whether Eagle Country, the
5 Hansens, and/or Innovative assumed obligations for “bodily injury” or “property damage” in a
6 contract, and if so, whether such a contract meets the definition of “insured contract”.

7 4.16 The Policy excludes coverage for “property damage” or “bodily injury” resulting
8 from or in any way related to the actual, alleged, or threatened discharge, dispersal, seepage,
9 migration, release, escape of, or presence of “pollutants”, as those terms are defined by the Policy.

10 4.17 An actual and justiciable controversy exists as to whether any “property damage”
11 or bodily injury resulted from or was in any way related to the actual alleged, or threatened
12 discharge, dispersal, seepage, migration, release, escape of, or presence of “pollutants” as defined
13 in the Policy and whether coverage is therefore unavailable.

14 4.18 The Policy excludes coverage for “property damage” to that particular part of real
15 property on which an insured is performing operations if the property damage arises out of those
16 operations.

17 4.19 The allegations described in the Underlying Complaint arise from Eagle Country,
18 the Hansens, and Innovative’s operations and/or defective work.

19 4.20 An actual and justiciable controversy exists as to whether any “property damage”
20 arose to that particular part of real property on which Eagle Country, the Hansens, and/or
21 Innovative were performing operations if the property damage arose out of those operations.

22 4.21 The Policy further excludes coverage for property damage caused by the insured’s
23 work that was incorrectly performed on the property.

1 4.22 An actual and justiciable controversy exists as to whether any “property damage”
2 was caused by Eagle Country, the Hansens, and/or Innovative’s work that was incorrectly
3 performed on the property and must be restored, repaired or replaced.

4 4.23 The Policy expressly excludes coverage for “property damage” to “your work”
5 included in the “products-completed operations hazard” as those terms are defined in the Policy

6 4.24 The allegations, as described in the Underlying Complaint, include damage to
7 Eagle Country, the Hansens, and/or Innovative’s work and/or product, specifically the water wells
8 and products furnished in connection with those goods.

9 4.25 An actual and justiciable controversy exists as to whether “property damage” to
10 “your work” included in the “products-completed operations hazard”, as those terms are defined
11 in the Policy, occurred.

12 4.26 The “impaired property” exclusion applies to bar coverage for “property damage”
13 to “impaired property” or property that has “not been physically injured” because it arises out of a
14 defect in “your work” or “your product” or arises out of a failure to perform a contract in agreeance
15 with its terms.

16 4.27 An actual and justiciable controversy exists as to whether any coverage to Eagle
17 Country, the Hansens, and/or Innovative exists for “property damage” to “impaired property” or
18 property that has “not been physically injured” because it arises out of a defect in “your work” or
19 “your product” or arises out of a failure to perform a contract in agreeance with its terms, as those
20 terms are defined by the Policy.

21 4.28 The Recall of Products exclusion applies to bar coverage for damages claimed for
22 the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal, or
23 disposal of “your product” or “your work” or “impaired property” as defined in the Policy.
24

1 4.29 An actual and justiciable controversy exists as to whether the Recall of Products
2 exclusion applies to bar coverage to Eagle Country, the Hansens, and/or Innovative for damages
3 claimed for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment,
4 removal, or disposal of “your product” or “your work” or “impaired property” as defined in the
5 Policy.

6 4.30 The Prior Injury or Damage Exclusion precludes coverage for “bodily injury” or
7 “property damage” which began or took place before the inception date of the Policy.

8 4.31 This Policy incepted on February 2, 2020.

9 4.32 An actual and justiciable controversy exists as to whether the harm began or took
10 place before the inception of the Policy.

11 4.33 The Fiduciary Exclusion serves to preclude coverage for any claim or “suit” arising
12 out of coercion, or dishonest, fraudulent, criminal or malicious actions of the insured

13 4.34 Underlying Plaintiffs allegedly signed an agreement under duress.

14 4.35 An actual and justiciable controversy exists as to whether the Fiduciary Exclusion
15 serves to preclude coverage for Eagle Country, the Hansens, and/or Innovative for any claim or
16 “suit” arising out of coercion, or dishonest, fraudulent, criminal or malicious actions of Eagle
17 Country, the Hansens, and/or Innovative.

18 4.36 Under the Duty to Defend Exclusion, Kinsale does not have a duty to defend where
19 there is no coverage.

20 4.37 An actual and justiciable controversy exists as to whether or not coverage exists
21 such that Kinsale is required to defend Eagle Country, the Hansens, and/or Innovative.

22 4.38 The Underlying Complaint alleges “property damage” to the water wells
23 constructed on the subject properties, including allegations of regulation violations.

24

1 4.39 An actual and justiciable controversy exists as to whether the allegations of the
2 Underlying Complaint against Eagle Country, the Hansens, and/or Innovative regarding the water
3 wells qualify as “underground property damage”.

4 4.40 The 20/21 Policy excludes coverage for any “bodily injury” or “property damage”
5 resulting from the actual, alleged, or threatened inhalation, ingestions, contact, or exposure to any
6 “fungi” or bacteria.

7 4.41 An actual and justiciable controversy exists as to whether the allegations of illness
8 based on potential exposure to bacteria or “fungi” as defined in the policy preclude Eagle Country,
9 the Hansens, and/or Innovative from coverage.

10 4.42 The 21/22 Policy excludes coverage for any “bodily injury” or “property damage”
11 relating in any way to the inhalation, absorption, ingestion, contact, or exposure to any form of a
12 “pathogen and related hazards.”

13 4.43 An actual and justiciable controversy exists as to whether the claims asserted in the
14 Underlying Complaint include allegations of illness based on potential exposure to “pathogen and
15 related hazards” as defined in the 21/22 Policy.

16 4.44 The Policy specifies that if the entity listed on the Policy Declaration Page is a
17 Limited Liability Corporation, that LLC is an insured. In addition, the LLC members are also
18 insureds, but only with respect to the conduct of the LLC’s business. Further, the LLC’s managers
19 are insureds, but only with respect to their duties as the LLC’s managers.

20 4.45 An actual and justiciable controversy exists as to whether the Hansen Defendants
21 are both and/or separately insured, as provided by the Policy, and whether either or both are entitled
22 to a defense based on the allegations of the Underlying Complaint.

23 4.46 The 21/22 Policy provides that Innovative is an additional insured if required
24

1 under a written contract. Innovative is only an additional insured if the written contract was
2 executed prior to the alleged "bodily injury" or "property damage." Further, Innovative is an
3 additional insured only with respect to the entity's vicarious liability for "bodily injury" and
4 "property damage."

5 4.47 An actual and justiciable controversy exists as to whether the Innovative is an
6 Additional Insured, as provided by the Policy.

7 4.48 Kinsale reserves the right to assert any other exclusions or grounds for which
8 coverage for the claims asserted in the Underlying Complaint may be excluded under the Kinsale
9 Policy.

10 **V. CAUSE OF ACTION FOR DECLARATORY RELIEF**

11 5.1 Kinsale reasserts paragraphs 1.1 through 4.48 and incorporates the same as though
12 fully set forth herein.

13 5.2 Actual and justiciable controversies exist as to whether any defense coverage is
14 owed to Eagle Country, the Hansens, and/or Innovative under the Policy regarding the claims
15 asserted against them in the Underlying Complaint.

16 5.3 Pursuant to and in accordance with 28 U.S.C. § 2201, Kinsale requests that the
17 Court grant declaratory relief in its favor and enter a judicial determination that Kinsale does not
18 have an obligation to provide a defense to Eagle Country, the Hansens, and/or Innovative under
19 the Policy regarding the claims asserted against them in the Underlying Complaint.

20 5.4 Actual and justiciable controversies exist as to whether any indemnity coverage is
21 available to Eagle Country, the Hansens, and/or Innovative under the Policy regarding the claims
22 asserted against it in the Underlying Complaint.

23 5.5. Pursuant to and in accordance with 28 U.S.C. § 2201, Kinsale requests that the
24

1 Court grant declaratory relief in its favor and enter a judicial determination that Kinsale does not
2 have an obligation to any indemnity coverage to Eagle Country, the Hansens, and/or Innovative
3 under the Policy regarding the claims asserted against them in the Underlying Complaint.

4 **VI. PRAYER FOR RELIEF**

5 Kinsale, having alleged the foregoing, does now hereby pray for relief as follows:

6 1. For a declaration that Kinsale owes no defense obligation to Eagle Country, the
7 Hansens, and/or Innovative for any claims asserted against them in the Underlying Complaint
8 arising from the subject loss.

9 2. For a declaration that Kinsale owes no indemnity obligation to Eagle Country, the
10 Hansens, and/or Innovative for any claims asserted against them in the Underlying Complaint
11 arising from the subject loss.

12 3. For a declaration that Eagle Country, the Hansens, and/or Innovative is bound by
13 any judicial declarations in this matter involving the Policy.

14 4. For all interest allowed by law.

15 5. For attorney fees and costs allowed by statute and law.

16 6. For other and further relief as the Court deems just and equitable.

17 DATED this 16th day of May 2022.

18 LETHER LAW GROUP

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